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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Joshua C., a Person Coming Under  
the Juvenile Court Law.

B235651  
(Los Angeles County  
Super. Ct. No. CK86130)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Valerie Lynn Skeba, Referee. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Emery El Habiby, Deputy County Counsel for Plaintiff and Respondent.

## **INTRODUCTION**

J.C., presumed father (father) of now 15 year-old Joshua C., appeals from the juvenile court's orders denying two substantively similar Welfare and Institutions Code section 388<sup>1</sup> petitions without hearings. Those petitions sought to change the juvenile court's orders detaining and releasing Joshua to his mother, J.G. (mother). Father asserted that the reports that the Los Angeles County Department of Children and Family Services (Department) prepared contained "spoliated" evidence and false and misleading statements. Father requested a hearing so that he could present evidence challenging the false statements. Father also asserted that it was not in Joshua's best interest to remain with mother in part because of mother's deficient parenting methods. We affirm.

## **BACKGROUND**

Mother and father were not married. Mother and father lived together until Joshua was two years old and then separated. Mother and father had conjoint custody of Joshua. On December 4, 2010, while then 14-year old Joshua was visiting father, father accused Joshua of taking \$2,000 from father and giving it to mother. When Joshua denied taking the money, father became very upset and repeatedly hit Joshua on his face and body with a closed fist. Father also struck Joshua four times on his chest and leg with a belt. Father swore at Joshua and kicked him out of the house, telling him not to return unless he had the money. Father said that if Joshua did not return with the money within one hour, he would call the police. Joshua went to mother's home and told mother what father had done. Mother took Joshua to a police station, and she and Joshua filed a report. An officer observed a red mark on Joshua's chest that was consistent with Joshua having been struck by a belt. Father was arrested, and mother obtained a temporary restraining order against father.

The social worker who interviewed Joshua noted that Joshua's face and neck were red. Joshua told the social worker that he did not take father's money. Joshua reported

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<sup>1</sup> All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

that he was afraid of father who always mistreated and disparaged him. Joshua did not want to have visits with father because he was afraid of father.

Father told the social worker that he could not talk about the case and that his attorney would call the social worker. Father's attorney told the social worker that he had instructed father not to speak with the social worker without the attorney being present. By letter, the social worker invited father to be present at a team decision meeting. Father responded by letter that he would not attend the meeting because he had a criminal case pending and his attorney requested that he not make any statements about his case.

On January 18, 2011, the Department filed a petition under section 300 that, as amended, alleged that father inappropriately physically disciplined Joshua by repeatedly striking him with a belt; that such discipline was excessive and caused Joshua unreasonable pain and suffering; that such discipline endangered Joshua's physical and emotional health and safety and placed Joshua at risk of physical and emotional harm, damage, danger, and physical abuse; and that Joshua did not want to reside with or visit father due to father's discipline. The juvenile court found a prima facie case that Joshua was a person described by section 300 and ordered Joshua detained. The juvenile court released Joshua to mother.

On May 10, 2011, father pleaded no contest to a violation of Penal Code section 273(a), subdivision (b), misdemeanor cruelty to a child and was placed on summary probation for four years with seven days in jail. On May 17, 2011, father pleaded no contest to the allegations in the amended section 300 petition.

On July 11, and 12, 2011, father filed substantively similar section 388 petitions that sought to change the juvenile court's orders detaining and releasing Joshua to his mother. The juvenile court denied father's section 388 petitions without a hearing on the grounds that the petitions did not state a change of circumstance or present new evidence and the proposed orders did not promote Joshua's best interest.

## DISCUSSION

Father contends that the juvenile court erred in denying his two related section 388 petitions without a hearing. Because the petitions did not present new evidence or a change of circumstances, the juvenile court did not err.

### A. *Standard of Review*

There is authority that we review the summary denial of a section 388 petition without an evidentiary hearing for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460.) Under an abuse of discretion standard of review, we will not disturb the juvenile court's decision unless the juvenile court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) On the other hand, whether the petition states a prima facie case sufficient to require a hearing may be reviewable de novo. Under either standard, the juvenile court did not err.

### B. *The Section 388 Petitions*

On July 11 and 12, 2011, father filed section 388 petitions that sought to change the juvenile court's orders detaining and releasing Joshua to his mother. Father asserted that "spoliated" evidence had been presented to the juvenile court that included medical and police reports that misidentified mother, misleading statements by mother's counsel, and Department reports that contained false and misleading statements by mother and the social workers. (Spoliation actually entails the destruction of evidence.) Father requested a hearing so that he could present evidence challenging the false statements. Father wanted the false and misleading statements redacted from the reports and the "original matter" reheard. Father asserted that removing Joshua from mother's care was in Joshua's best interest because mother had a history of sexual and physical abuse by her parents for which abuse she had not been treated and because mother's parenting methods routinely involved parental alienation and emotional abuse "via inappropriate parenting techniques." "This" (apparently mother's parenting methods), father

contended, had been documented in superior court pleadings since 2004. The juvenile court denied the petitions without a hearing on the grounds that the petitions did not state a change of circumstance or constitute new evidence and the proposed orders did not promote Joshua’s best interest.

*C. Application of Relevant Principles*

Pursuant to section 388, a parent of a dependent child may petition the juvenile court “upon grounds of change of circumstance or new evidence . . . for a hearing to change, modify, or set aside any order of court previously made . . . .” (§ 388, subd. (a).) “[T]he change of circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged prior order.” (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485; *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451.) The juvenile court shall order that a hearing be held if it appears that the child’s best interests may be promoted by the proposed change of order. (§ 388, subd. (d).) The court may deny the section 388 petition ex parte—i.e., without a hearing—if the petition does not state a change of circumstance or new evidence that might require a change of order or fails to demonstrate that the requested modification would promote the child’s best interest. (Cal. Rules of Court, rule 5.570(d)<sup>2</sup>.)

Section 388 petitions “are to be liberally construed in favor of granting a hearing to consider the parent’s request. [Citations.] The parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.) “There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.]” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) The prima facie showing may be based on the facts in the petition and in the court file. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 463.) “The prima facie requirement is not met unless the

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<sup>2</sup> All citations to rules are to the California Rules of Court unless otherwise noted.

facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

The juvenile court did not err in denying father’s section 388 petitions without a hearing. On May 17, 2011, father pleaded no contest to the allegations in the amended section 300 petition. Father understood that if he pleaded no contest, Joshua would be placed with mother. Two months later, father filed his section 388 petitions. Neither of father’s section 388 petitions stated any facts that would support a finding that there was a change in circumstances or new evidence that would justify a change in the juvenile court’s orders. Both petitions consisted solely of the allegation that false evidence had been presented to the juvenile court. Neither petition identified the evidence that father contended was false, explained how the false evidence was significant to the case, or stated when father learned that the challenged evidence was false.

Father contends that he must be heard in order to serve Joshua’s best interests. Father claims that his counsel did not allow him to communicate with the Department from the commencement of this case until May 10, 2011, due to father’s pending criminal case. Later, father admits that it would have been “preferable” if he had presented his evidence from the outset of the case, but again claims he was prevented from doing so based on his counsel’s advice while he was facing felony charges. Father’s admission demonstrates that father possessed from the outset of the case the unidentified evidence that he claims would show that false evidence was presented to the juvenile court. Because father possessed that evidence from the outset of the case, it patently is not “new” evidence. That father initially withheld the purported evidence then later chose to try to present such evidence at a time that was advantageous to father is not a “change of circumstance” that would support a hearing under section 388. Finally, father contends that as of May 10, 2011, he was no longer constrained from divulging the true facts of the case. One week later, on May 17, 2011, when father was no longer constrained by the advice of counsel, father pleaded no contest to the allegations in the amended section 300 petition that he inappropriately physically disciplined Joshua without any suggestion from father that the evidence presented to the juvenile court up to that time was false.

Father failed to state a prima facie case that he was entitled to relief under section 388. Accordingly, the juvenile court did not err in denying father's section 388 petitions without a hearing. (Rule 5.570(d); *In re Angel B.*, *supra*, 97 Cal.App.4th at p. 460; *In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250; *In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 806.)

### **DISPOSITION**

The orders are affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.